

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

ERNEST L. ROTHGEB,

:

Plaintiff,

:

Case No. 3:08cv00115

:

vs.

District Judge Thomas M. Rose

:

Magistrate Judge Sharon L. Ovington

MICHAEL J. ASTRUE,
Commissioner of the Social
Security Administration,

:

:

Defendant.

:

DECISION AND ENTRY

The Court has conducted a de novo review of the Report and Recommendations of United States Magistrate Judge Sharon L. Ovington (Doc. #11), to whom this case was originally referred pursuant to 28 U.S.C. §636(b), and noting that no objections have been filed thereto and that the time for filing such objections under Fed. R. Civ. P. 72(b) has expired, hereby **ADOPTS** said Report and Recommendations.

It is therefore **ORDERED** that:

1. The Report and Recommendations filed on April 11, 2009 (Doc. #11) is ADOPTED in full;
2. The Commissioner's non-disability finding is VACATED;
3. No finding is made as to whether Plaintiff Ernest L. Rothgeb was under a

“disability” within the meaning of the Social Security Act;

4. This case is remanded to the Commissioner and the Administrative Law Judge under Sentence Four of 42 U.S.C. §405(g) for further consideration consistent with this Decision and Entry and the Report and Recommendations; and
5. This case is terminated on the docket of this Court.

May 6, 2009

***S/THOMAS M. ROSE**

Thomas M. Rose
United States District Judge